

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION**

R. ALEXANDER ACOSTA,)
SECRETARY OF LABOR,)
UNITED STATES DEPARTMENT OF LABOR,)
Plaintiff,)
v.) Civil Action No. 2:19-cv-00507
APEX PIPELINE SERVICES, INC.)
a corporation,)
Defendant.)

)

MOTION TO APPROVE AND ENTER CONSENT JUDGMENT

Plaintiff R. Alexander Acosta, Secretary of Labor, United States Department of Labor, hereby moves this Court to approve and enter the Consent Judgment of Apex Pipeline Services, Inc., as agreed to by the parties. In support thereof, the Secretary represents that the parties have reached an agreement for the purpose of settling the above-referenced matter. The terms of this agreement are set forth in the Consent Judgment attached hereto as Exhibit A.

WHEREFORE, for the reasons set forth above, the Secretary respectfully requests that the Court enter the Consent Judgment attached hereto.

Respectfully submitted,

Kate S. O'Scannlain
Solicitor of Labor

Oscar L. Hampton III
Regional Solicitor

Samantha N. Thomas
Associate Regional Solicitor

/s/ Leah Williams
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Regional Wage and Hour Counsel
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U.S. DEPARTMENT OF LABOR
Attorneys for Plaintiff

Date: July 12, 2019

CERTIFICATE OF SERVICE

I hereby certify that on July 12, 2019, the foregoing Motion to Approve and Enter Consent Judgment was electronically filed with the Clerk of Court using the CM/ECF system,

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R. ALEXANDER ACOSTA,)
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LABOR,) Civil Action No: 2:19-cv-00507
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APEX PIPELINE SERVICES, INC., dba)
APEX PIPELINE SERVICES)
)
)
Defendant.

CONSENT JUDGMENT

Plaintiff R. Alexander Acosta, Secretary of Labor, United States Department of Labor, hereinafter referred to as "Plaintiff" or "the Secretary," has filed his Complaint alleging violations of the Fair Labor Standards Act of 1938, 29 U.S.C. § 201, *et seq.* (hereinafter "the Act"). Defendant named above, hereinafter referred to as "Defendant" or "Employer," has appeared by counsel, and waives formal service of process of the Summons and Complaint, and any defense which it may have, and hereby agrees to the entry of this Consent Judgment without contest. It is, therefore, upon motion of the attorneys for Plaintiff and for good cause shown:

ORDERED, ADJUDGED, AND DECREED that Defendant, its officers, agents, servants, and all persons acting or claiming to act on its behalf and interest be, and they hereby are, permanently enjoined and restrained from violating the provisions of Sections 6, 7, 11(c), and 15 of the Act, in any manner, specifically:

1. Defendant shall not, contrary to Section 6 of the Act, pay to any of its employees who in any workweek are engaged in commerce or in the production of goods for commerce, or

employed in an enterprise engaged in commerce or in the production of goods for commerce, within the meaning of the Act, wages at rates less than those which are now, or which in the future may become, applicable under Sections 6 and 15(a)(2) of the Act.

2. Defendant shall not, contrary to Section 7 of the Act, employ any of its employees including, but not limited to, any of its employees working at Apex Pipeline Services, Inc., dba Apex Pipeline Services, 503 River Road, Hub Industrial Park, Nitro, WV 25143 or at any business location owned, operated, and/or controlled by Defendant, and at any other business location at which its employees perform work, in any workweek when they are engaged in commerce or employed in an enterprise engaged in commerce, within the meaning of the Act, for workweeks longer than the hours now, or which in the future become, applicable under Sections 7 and 15(a)(2) of the Act, unless the said employees receive compensation for their employment in excess of the prescribed hours at a rate equivalent to one and one-half times the regular rates applicable to them.

3. Defendant shall not fail to make, keep, and preserve adequate records of its employees and of the wages, hours, and other conditions and practices of employment maintained by it including, but not limited to, any of its employees working at Apex Pipeline Services, Inc., dba Apex Pipeline Services, 503 River Road, Hub Industrial Park, Nitro, WV 25143, or at any business location owned, operated, and/or controlled by Defendant, and at any other business location at which its employees perform work, as prescribed by the Regulations issued pursuant to Section 11(c) and 15(a)(5) of the Act and found at 29 C.F.R. Part 516.

4. Defendant shall not discharge or take any retaliatory action against any of its employees, whether or not directly employed by Defendant, because the employee engages in any of the following activities pursuant to Section 15(a)(3) of the Act:

- i. Discloses, or threatens to disclose, to a supervisor or to a public agency, any activity, policy, or practice of the Employers or another employer, with whom there is a business relationship, that the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act;
- ii. Provides information to, or testifies before, any public agency or entity conducting an investigation, hearing or inquiry into any alleged violation of the Act, or a rule or regulation promulgated pursuant to the Act, by the Employer or another employer with whom there is a business relationship;
- iii. Objects to, or refuses to participate in any activity, policy or practice which the employee reasonably believes is in violation of the Act, or a rule or regulation promulgated pursuant to the Act.

It is further ORDERED, ADJUDGED and DECREED by the Court that:

5. Defendant is enjoined and restrained from withholding gross back wages in the sum total amount of \$121,019.53, and are jointly and severally liable for the payment of \$121,019.53 in liquidated damages, due certain employees and former employees of Defendant set forth and identified in Schedule A, which is attached as Exhibit A hereto and made a part hereof.

6. Defendant shall pay gross back wages and liquidated damages in the total amount of \$242,039.06, for violations of the overtime provisions of the Act by Defendant alleged to have occurred during the period beginning April 1, 2016 and ending March 23, 2018 (“relevant period”). This amount shall represent the full extent of back wages and liquidated damages owed by Defendant for the relevant period to the employees set forth and identified on the attached Schedule A. It is further agreed that the overtime compensation and liquidated damage payments

by Defendant in the amounts as specified above are in the nature of back wages and liquidated damages pursuant to the provisions of the Act. Defendant shall remain responsible for all tax payments considered to be the “employer’s share,” including, but not limited to, FICA.

i. The provisions of this Consent Judgment relative to back wage and liquidated damages payments shall be deemed satisfied when Defendant delivers to the designated representatives of Plaintiff a payment in the amount of \$242,039.06 within thirty (30) days of the entry of this Judgment by the Court. Payment may be made online by ACH transfer, credit card, or debit card by going to <https://www.pay.gov/public/form/start/77689032> or www.pay.gov. Alternatively, payment may be in the form of a certified check, bank check, or money order made payable to the order of “**Wage and Hour Division – Labor**,” and mailed to:

**U.S. Department of Labor, Wage & Hour Division
The Curtis Center, Suite 850 West
170 South Independence Mall West
Philadelphia, PA 19106-3317**

The check or money order shall bear the following reference: **Case ID# 1816367**.

ii. The Secretary, through the Wage and Hour Division, shall distribute the back wages (less any applicable federal taxes, withholdings, and deductions) and liquidated damages payments to the employees and former employees on Schedule A, or to their estates. Any sums not distributed to the employees or former employees on Schedule A, or to their estates, because of inability to locate the proper persons or because of such persons’ refusal to accept such sums, shall be deposited with the Treasurer of the United States pursuant to 29 U.S.C § 216(c).

iii. To the best of its ability and based upon information it currently has in its possession, Defendant shall provide to Plaintiff the social security number and last known

address of each employee or former employee due money under this Consent Judgment within thirty (30) days of the entry of this Judgment by the Court.

iv. The provisions of this Consent Judgment shall not in any way affect any legal right of any individual not named on Schedule A, nor shall the provisions in any way affect any legal right of any individual named on Schedule A to file any action against Defendant for any violations alleged to have occurred outside the relevant period.

7. Neither Defendant nor anyone on its behalf shall directly or indirectly solicit or accept the return or refusal of any sums paid under this Consent Judgment. Any such amount shall be immediately paid to the Secretary for deposit as above, and Defendant shall have no further obligations with respect to such returned monies. If recovered wages have not been claimed by the employee or the employee's estate within three years of the entry of this Consent Judgment, the Secretary shall deposit such money with the Treasury in accordance with Section 16(c) of the Act.

8. Further, the parties agree that the instant action is deemed to solely cover Defendant's business and operations for the relevant period for all claims raised in the Complaint as a result of the Secretary's investigation. The parties agree that the filing of this action and the provisions of this Judgment shall not, in any way, affect, determine, or prejudice any and all rights of any person specifically named on Schedule A or the Secretary for any period after March 23, 2018, or any persons, be they current or former employees, not specifically named on Schedule A, insofar as such rights are conferred and reserved to said employees by reason of Section 16(b) of the Act.

9. Defendant agrees that it is an employer within the meaning of Section 3(d) of the Fair Labor Standards Act, 29 U.S.C. § 203(d).

10. By entering into this Consent Judgment, Plaintiff does not waive his right to conduct future investigations of Defendant under the provisions of the FLSA and to take appropriate enforcement action, including assessment of civil money penalties pursuant to Section 16(e) of the FLSA, with respect to any violations disclosed by such investigations.

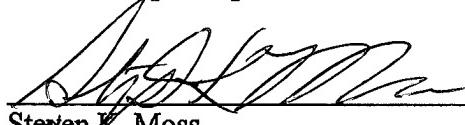
It is FURTHER, ORDERED, ADJUDGED, AND DECREED that each party will bear its own fees and other expenses incurred by such party in connection with any stage of this proceeding including, but not limited to, attorney fees which may be available under the Equal Access to Justice Act, as amended.

Date _____

UNITED STATES DISTRICT JUDGE

Defendant has appeared by counsel and hereby consents to the entry of this Judgment.

For the Employer, Apex Pipeline Services, Inc., dba Apex Pipeline Services



Steven K. Moss

As Part-Owner, Chief Executive Officer and President of Apex Pipeline Services, Inc., dba Apex Pipeline Services

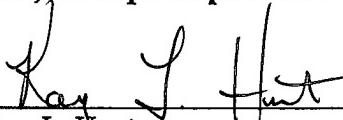
For the Employer, Apex Pipeline Services, Inc., dba Apex Pipeline Services



Robert A. Keaton

As Part-Owner and Vice President of Apex Pipeline Services, Inc., dba Apex Pipeline Services

For the Employer, Apex Pipeline Services, Inc., dba Apex Pipeline Services



Roy L. Hunt

As Part-Owner and Chief Financial Officer of Apex Pipeline Services, Inc., dba Apex Pipeline Services



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For the Secretary:

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Allman	David	J
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Amerine	Jeff	
Amerine	Kenneth	
Anderson	Dustin	
Anderson	James	S
Anderson	Steven	T
Arnold	Caden	P
Asbury	Christohper	
Back	Brian	K
Baker	Gregory	D
Ball	Christopher	J
Bartrug	Chase	E
Bartug	Terry	L
Bassett	Joseph	A
Bassett	Tommy	
Bassett	William	B
Beal	Jason	S
Beaver	Dustin	L
Beckett	Keith	L
Bennett	Cory	J
Boggs	Samuel	N
Boone	Christopher	A
Brady	Timothy	A
Brightwell	Cody	
Brooks	George	L
Brown	Brian	R
Brown	Heather	L
Brown Jr.	Andrew	C
Bunner	Buck	R
Butterworth	Robert	H
Carpenter	Nathan	A
Carper	Ralph	M
Carte	Matthew	D
Casto	Roy	

Chambers	Jennifer	L
Chappell	Theodore	
Ciarmella	Peter	G
Combs	Dana	A
Conley	Darrin	R
Cooper	Ronnie	L
Copeland	Davin	
Corne	Richard	
Cottrell	Brian	L
Cressley	Alex	
Cunningham	Nathan	
Cutshall	Toby	A
Danahey	Shawn	T
Davis	Travis	M
Dempsey	Paul	
Diehl	Forest	C
Dobbs	Michael	W
Drennen	William	C
Dulaney	Dustin	
Duncan	Daniel	J
Engle	Jackie	A
Evans	Tyler	
Falls	Jason	L
Falls	Jeremy	L
Falls	Rickie	J
Feldner	Michael	J
Ferrell	Joseph	R
Flagg	William	
Flinn	Sky	L
Fordyce	John	E
Fox	Russell	W
Frasnelly	Christopher	J
Freed	Harold	K
Frye II	Harold	Q
Gillespie	Charles	K
Glass	Danny	
Godfrey	Travis	J
Godfrey	Tyler	J
Grimes	Rodney	R
Grishaber	Chris	J
Gwinn	Christopher	
Habig	Patrick	A
Haga	Roger	D
Hall	Anthony	M

Hall	Eric	D
Hall	Wayne	A
Harris	Brad	
Harrison	Joseph	N
Hart	Cody	
Hart	Craig	A
Hashman	John	
Haughn	James	C
Hayes	Donald	W
Hayes	Gary	B
Heatherly	Ronald	L
Hedrick	Gregory	L
Herron	Anita	S
Higgins	David	F
Hileman	Jessee	A
Hogue	Michael	
Hutchison	Alex	L
Hyde	Eddy	J
Hyde Sr.	Eddy	
Ivey	Jason	
Jarvis	Scott	E
Jett	Shawn	M
Johnson	Aaron	
Johnson	Michael	K
Joy	Bill	L
Kinney	Marva	A
Kirkland	Allen	S
Kittle	Gregory	
Kuhens	Jerry	
Lamar	Donald	P
Lambert	Jayson	N
Lamp	Brittany	L
Lamp	Phil	M
Lane	Stewart	D
Largent	Benjamin	R
Lee	Jeffrey	N
Leezer	Candance	
Legg	Tad	
Lemley	Charles	W
Lewis	Fredric	
Lindamood	Coleton	
Logsdon	Noah	T
Lohr	John	W
London	Melissa	A

Long	Crystal	
Lucas	Dalton	J
Mace	Joshua	R
Mallow	Gregory	A
Markus	Colton	P
Massey	Liam	J
Matheney	Terry	L
Matzenbach	Brant	R
May	Daniel	G
McGilton	Cory	J
McNabb	Robert	T
Meadows	David	R
Metheney	Justin	C
Metz	Cory	M
Miller	Caleb	A
Miller	Derek	J
Miller Jr.	Howard	W
Morris	James	R
Morris	Jarrod	L
Morris	Robert	L
Morris II	Phillip	
Morris Jr.	Steven	
Moubray	Randolph	W
Mullins	David	
Musgrave	Scott	L
Myers	Johhny	P
Myers	Teddy	
Nelson	Kevin	A
Nichols	Braden	
Nichols	Mason	E
Odell	Vernon	D
Owens	Johnathan	
Pack	Seth	M
Palmer	Caleb	B
Patterson	Mitchell	
Pauley	Albert	S
Pennington	Trey	A
Phillips	Danny	L
Phillips	Terry	L
Phillips	Tyler	M
Pratt	Justin	
Pullen	Adam	R
Quintrell	Brandon	
Quintrell	Terry	L

Raikes	Nicholas	
Raines	Jeremiah	D
Rinehart	James	D
Rivera	Josue	D
Rivera	Oscar	
Rose	Gregory	W
Ross	Jared	L
Russell	Jonathan	W
Samples	Michael	
Sanders	Gordon	L
Saner	Scott	
Satterfield	William	T
Saurer	Jesse	
Scamehorn	Christopher	
Schweitzer	Todd	J
Scyoc	Richard	R
Sefert	Randall	D
Settle	Jason	L
Shamblin	Delmer	
Sizemore	Alva	C
Skelton	Tyler	J
Skidmore	Tim	A
Smith	Craig	A
Smith	Daniel	L
Smith	Jason	M
Smith	Michael	L
Soles	Robert	W
Songer III	Charles	E
Sowards	Timothy	R
Sprouse	Brian	N
Stack	Carl	S
Steele	James	F
Sutton	David	E
Sycafoose	Parker	
Tatterson	David	A
Taylor	Anthony	
Taylor	Billy	J
Teter	Norman	A
Thomas	Austin	
Thomas	Charles	N
Thompson	John	L
Torres	Jennifer	
Torres	Jose	
Torres	Joseph	P

Truman	Brandon	
Truman	Darrell	J
Truman	Dencil	
Turner	Harry	E
Turner	Jonathan	R
Turner	Tyler	E
Utt	David	S
Utt	Dustin	N
Wade Jr.	Gary	
Wanner	Frank	C
Ward	Casey	
Watters	Robert	F
Webb	Terry	B
Welch	Timothy	P
Welch	Tyler	
Wesney	Eren	L
Whytsell	Nicholas	S
Williams	Logan	
Wilson	Dustin	P
Wisecarver	Thomas	A
Wood	James	G
Wood	Kelsey	J
Woodford	Jason	S
Woods	Christopher	G
Wooten	David	M
Workman	James	R
Wray	Shayne	W
Wright	Shane	M
Wyant	Richard	L